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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 113

HONORABLE BERNARD M. DECKER,
UNITED STATES DISTRICT JUDGE, ET AL,
Petitioners,

VS.

HARPER & ROW, PUBLISHERS, INC., ET AL,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION OF MINNESOTA STATE BAR ASSOCIATION FOR LEAVE TO APPEAR AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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July 31, 1970

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The Minnesota State Bar Association respectfully moves under paragraph 3 of Rule 42 of the Supreme Court Rules for leave to appear herein *amicus curiae* in support of the position of the respondents in this case, and for leave to adopt as its own the brief being filed herein by the American Bar Association. Written consent of all the parties to the case has not been sought because the parties are too numerous for this movant to

consult in the time available to it. Furthermore, the American Bar Association was unable to obtain consent of the attorneys for petitioners for its filing of a brief *amicus curiae* herein.

Because a large percentage of the business conducted in Minnesota and a large percentage of the business handled by Minnesota lawyers result from the activities of corporations, any decision by this Court relating to the attorney-client privilege as applied to corporate agents and employees will be of the greatest moment, not only to corporations doing business in Minnesota but also to a large segment of the Minnesota Bar.

The Minnesota State Bar Association feels very strongly that the "control group test," adopted by the trial court and urged by petitioners here would very seriously impair the attorney-client privilege of corporations, and would seriously curtail communication by corporate employees with counsel. The result would necessarily be that attorneys for corporate clients would be greatly restricted in securing information, either for the purposes of advice or for the purposes of litigation. Under such circumstances, the effectiveness of the lawyer's representation of his client would be seriously diminished.

The Minnesota State Bar Association submits that the test enunciated by the Court of Appeals fairly balances the need for the uninhibited communication with counsel which the privilege permits with the need for freedom of discovery in litigation. We believe that such a test is infinitely preferable to the "control group test" adopted by the trial court.

The parties hereto are primarily concerned with the peculiar aspects of the attorney-client privilege which are here involved. The Minnesota State Bar Association, in common with the American Bar Association, is interested in the broader aspects of the attorney-client relationship which must necessarily be involved in any decision of this case, and wishes therefore to present to this Court policy considerations which are of the greatest importance to the Minnesota State Bar Association and to the legal profession which it represents.

The Minnesota Bar Association believes that the following questions which are crucial to it will not be presented by the parties herein:

1. Whether a communication by an agent or employee of a corporation to the attorney for the corporation is within the scope of the privilege;

2. Whether an attorney for a corporation may be required to disclose information received from the corporation's agent or employee which may reveal a violation by the agent or the employee of a law imposing criminal sanctions, with the result that the agent or employee will be deprived of the privilege against self-incrimination;

3. Whether the "control group test" will so discourage communication by corporate employees and agents with the corporation's attorneys that the attorney will in effect be prevented from giving advice to insure corporate compliance with the law.

WHEREFORE, the Minnesota State Bar Association prays that it be permitted to appear herein *amicus curiae* in support of the position of the respondents, and to adopt as its own the brief and argument of the American Bar Association herein.

Respectfully submitted,

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